

Tr. 2670-73. According to Colby May, his advice was premised on the same thinking that produced his opinion on the translator minority preference certification, i.e., that the controlling factor was whether or not a majority of the board were minorities. Tr. 3366-67; 3370. He again recognized, however, that the minority owners had to be "in fact controlling and operating" NMTV by meeting the criteria for directors noted above, i.e., attending meetings; participating in meetings; and generally directing the policies and affairs of the company. Tr. 3226.

62. Colby May did not prepare any written analysis supporting his advice to the client. Tr. 3229. He told Paul Crouch that he had read the documents creating the exception; however, Paul Crouch made no inquiry as to whether he had done any other research or discussed the matter with Commission personnel. Tr. 3488-89. In fact, Colby May had only read the Report and Order adopting the exception and the accompanying text of the Rule. In doing so, however, he failed to consider the impact of Note 1 to the Rule which made clear that "control" means "actual working control in whatever manner exercised." Tr. 3218-21. He also never analyzed Commission precedent concerning the definition of control. Tr. 3221-23. He consulted no other attorneys outside his firm in rendering his advice. Tr. 3231. Colby May recalled discussing with Jane Duff prior to the filing of Odessa the existence of a

conflict of interest on his part. The conversation occurred over the phone and Jane Duff immediately told him that she understood but that he should go forward. A similar telephone call occurred with a Trinity Broadcasting Network official eliciting a similar response; however Colby May does not recall with whom he talked. Tr. 3578-80. The casual manner in which the matter was handled suggests that the existence of a conflict was of little concern because, in reality, there was no divergence between the interests of NMTV and Trinity Broadcasting Network.

63. Notwithstanding whatever advice may have been given by Colby May, the record establishes that Paul Crouch was aware that such advice was not a sufficient basis to conclude that his interest in NMTV was permissible under the minority exception to the 12 station limit. Thus, at Tr. 2674, Paul Crouch testified as follows (emphasis added):

"but I do recall one thing, I told Mr. May very explicitly, I said, if we go for this and he did make it clear to me that I believed we were the very first applicant to approach the Commission for this exception. And I said, we're plowing new ground, new territory here and I said, put everything on the record, make it clear to the agency what the relationship between TTI and Trinity Broadcasting is, divulge everything, put everything on the record, file it with the Commission. If they pass on it and approve it, fine, our goal was to acquire as many stations and network affiliates as we possibly could."

64. Paul Crouch also conceded that Translator T.V., Inc.'s filing for a full power station constituted a change in the corporation's direction the purpose of which "was to pass by the agency the possibility of being granted the exception to the rule of twelve." Tr. 2686. It is abundantly clear from this testimony that Paul Crouch was aware of the novel nature of the request and the resulting need to fully inform the Commission of the facts. He did not passively rely on the views of Colby May. Indeed, such reliance would not have been reasonable for a person such as Paul Crouch who was an experienced businessman and broadcaster with specific past experience as a result of the International Panorama case concerning the need for full candor with the Commission and the dangers of passively relying on counsel to meet that responsibility. Colby May remained an attorney with relatively limited experience primarily focused in the representation of Trinity Broadcasting Network. Since his firm largely depended on Trinity Broadcasting Network for its financial survival, an experienced businessperson such as Paul Crouch could be expected to recognize that Colby May's advice would be heavily influenced by a desire to please Trinity Broadcasting Network with advice consistent with its goals. Colby May, in short, was not an attorney who could reasonably be relied upon to provide independent legal counsel to a corporation such as NMTV, assuming that it were seeking in

good faith to determine its legal obligations independent of any goals of Trinity Broadcasting Network.

65. The unreliability of Colby May's advice should also have been evident from a remark during the period leading up to Odessa attributed to him by Jane Duff. He told her, in the context of suggesting that NMTV hold separate annual meetings, that ". . . we needed to make things as separate as we could" Tr. 1692 (emphasis added). This initially was inconsistent with his purported advice that only the minority status of the directors mattered in determining NMTV's eligibility for the exception. One could logically expect an opinion that NMTV either needed to be separate or that it didn't. Moreover, this advice suggested that Colby May was well aware that Trinity Broadcasting Network had no intention of establishing NMTV as an independent entity in other than a cosmetic fashion. Further, the advice to make the corporations as separate "as we could" constituted encouragement to create a misleading cosmetic facade designed to give a false public impression of NMTV's status. This is also supported by the fact that any reasonable client who was proceeding in good faith and received advice that it should be as separate as it "could" should have recognized that such advice constituted meaningless waffling. Such a client could be expected to recognize that there might be something deficient in the advice received. Trinity Broadcasting

Network/NMTV, however, proceeded to create precisely the misleading facade of separateness that Colby May recommended.

66. Notwithstanding his recognition of the novel nature of the proposed Odessa transaction, Paul Crouch turned the details of the transaction over to Jane Duff and Colby May. Tr. 2674. The record shows that he thereafter abdicated his responsibility with respect to the matter in a manner reminiscent of his conduct in International Panorama.

b. The Reason For Seeking A Station In Odessa

67. Paul Crouch had not undertaken any market study of the Odessa market in connection with the acquisition to determine future plans for Odessa. Paul Crouch made no study of the size of the market, the possibility of cable coverage, or the demographics of minorities, including the extent of cable penetration among minorities. Tr. 2381-82, 2681. It was always understood that Odessa (and later Portland) would be Trinity Broadcasting Network affiliates except insofar as FCC requirements mandated local programming. Tr. 2765-66. As noted, Paul Crouch also viewed Odessa as an opportunity to "pass by" the agency the possibility of an exception to the rule of 12.

68. Jane Duff at TBF Exhibit No. 101, para. 43, testified as follows:

"Soon after receiving Mr. May's advice, I called Pastor Espinoza to get his input on whether NMTV should acquire the Odessa station. He was as excited as I was, if not more so. He was familiar with the Odessa area of Texas and was very interested in the market because of its Hispanic population. He thought, as I did, that NMTV should buy the permit. I proceeded to make an agreement with the Roovers."

Thus, it was suggested that David Espinoza's input as to the market's Hispanic population influenced Translator T.V., Inc.'s decision. In fact, however, it appears that any input from David Espinoza came well after the underlying decision had been made. At least by December 22, 1986, the transaction had advanced to the point of a draft purchase agreement. MMB Exhibit No. 119. David Espinoza was first advised of the Odessa possibility at some point in late 1986 or early 1987 by a phone call from Jane Duff. TBF Exhibit No. 106, para. 12. Since there was already a draft agreement by or near the earliest date that David Espinoza could have been informed of Odessa, it can be concluded that the underlying decision had already been made well prior to that date. This is inconsistent with Jane Duff's testimony that she talked to David Espinoza soon after she had learned from Colby May that the acquisition was feasible. TBF Exhibit No. 101, para. 43; Tr. 1688-89. Moreover, David Espinoza's input was based only on his having visited the area some years before and his knowing some people who lived there. TBF Exhibit No. 106, para. 12. There is no basis for finding that David Espinoza

had significant input in the decision to go forward with Odessa. It must rather be found that the claims made in TBF Exhibit No. 101, para. 43, are lacking in candor.

69. The first formal action authorizing the acquisition of Odessa is an action by written consent dated January 26, 1987 (after the contract had been signed). MMB Exhibit No. 125. David Espinoza, however, did not learn of this action or sign it until 1993. Tr. 4264-65. Jane Duff corresponded with Rev. David Roemer concerning the sale of Odessa using Trinity Broadcasting Network stationery and signing as Assistant to the President, her Trinity Broadcasting Network position. MMB Exhibit No. 120.

70. The Purchase Agreement is dated as of January 10, 1987. MMB Exhibit No. 122. Section 7 (a) provides that the agreement will become void if the FCC makes an adverse finding on the minority exception claim based on its "interpretation and/or application" thereof. This is further evidence that NMTV did not in fact rely upon Colby May's view that the minority exception was clearly applicable, but that it rather recognized the uncertain nature of NMTV's case for the exception.

71. The purchase price of \$12,500 was to be met (and was met) by a loan from Trinity Broadcasting Network. The loan was not reduced to writing and had no terms except that it would be repaid when NMTV got the money. Tr. 1701.

c. The Odessa Application

72. Jane Duff and Colby May were principally responsible for preparing the Odessa application for assignment of the construction permit; however, Paul Crouch signed it. The application was filed with the Commission on February 3, 1987. MMB Exhibit No. 129. Notwithstanding his experience in the International Panorama case, Paul Crouch did not review the application "studiously" before he signed it. He at most "flipped through" it. He relied upon Jane Duff and Colby May and was not sure why he had signed it. Tr. 2699.

73. There were inaccuracies and omissions in the Odessa application. Thus, in the list of parties to the application, the application failed to include the non-director officers Phillip Crouch and Terrence Hickey. MMB Exhibit No. 129, p. 24. Terrence Hickey had in fact been elected as a second assistant secretary only days prior to the filing of the application. Tr. 1715-16. Phillip Crouch's connection to Trinity Broadcasting Network was disclosed in response to inquiry as to media interests of Paul Crouch's relatives. MMB Exhibit No. 129, p. 38. As a result of the failure to identify these officers, however, the Commission was also deprived of information as to the officers' connection to Trinity Broadcasting Network. The application also erroneously reported that there had never been a change in the officers and directors of NMTV and that NMTV had filed 15

(rather than 17) translator applications. MMB Exhibit No. 129, p. 32.

74. Apart from reporting that Paul Crouch had an interest in Trinity Broadcasting Network, no details were provided in the application as to the relationship between NMTV and Trinity Broadcasting Network. There was nothing remotely approaching what Paul Crouch had previously recognized as necessary:

"put everything on the record, make it clear to the agency what the relationship between TTI and Trinity Broadcasting is, divulge everything, put everything on the record, file it with the Commission."

Tr. 2674 (emphasis added). Giving the glaring absence of anything even remotely approaching this degree of disclosure, it can only be found that while Paul Crouch knew what he should have done, he chose not to do it.

75. The Programming Statement in the application made no reference to any special emphasis on minority programming. It consisted of one paragraph of boilerplate language assuring without specificity that NMTV would provide programming responsive to ascertained needs and would maintain required problems/programs reports. MMB Exhibit No. 129, p. 40.

d. 1987 Combined Annual Meeting

76. According to Jane Duff, when she spoke to Colby May about the Odessa acquisition, he told her, as noted, that they

should keep the affairs of Translator T.V., Inc. "as separate as we could", specifically recommending separate board meetings. Tr. 1692.

77. Translator T.V., Inc. in fact had a combined board meeting with Trinity Broadcasting Network on January 19, 1987, 9 days after the signing of the Odessa Purchase Agreement. There is no reference of this event in the minutes of the meeting. MMB Exhibit No. 124. Jane Duff said she couldn't explain why Colby May's advice was seemingly ignored. Tr. 1706. Then she proffered the suggestion that matters relating to Translator T.V., Inc. were excluded from the minutes because of Colby May's advice, i.e., no Translator T.V., Inc. business was transacted. Tr. 1707-08. In fact, Terrence Hickey was elected as Translator T.V., Inc.'s second assistant secretary. This left Jane Duff unable to provide an explanation. Tr. 1708-10.

78. Terrence Hickey as well as Translator T.V., Inc.'s other assistant secretary, Phillip Crouch, were also assistant secretaries of Trinity Broadcasting Network. Their election was justified as being for the purpose of facilitating the obtaining of signatures on official documents requiring an officer's signature. MMB Exhibit No. 101, para. 45. Another stated reason was to facilitate a policy of requiring two signatures on checks over \$1,000 to assure the IRS that funds were not being used for private purposes. TBF Exhibit No.

101, para. 46. Basically the same policy was followed by Trinity Broadcasting Network. Tr. 1474-75. David Espinoza was both CFO and a director of Translator T.V., Inc. and, unlike the assistant secretaries, was not employed by Trinity Broadcasting Network. David Espinoza, however, never signed any checks. Tr. 4176.

79. The minutes reflected consideration of a budget for the purchase of low power stations by Trinity Broadcasting Network. When asked why there was no discussion of a similar budget for Translator T.V., Inc., Paul Crouch initially said that both boards must have concluded that Translator T.V., Inc. had a full plate with the Odessa purchase. Then he proffered that it was not Translator T.V., Inc.'s purpose to obtain low powers by purchase but by application using the minority preference. He said it would make no sense for Trinity Broadcasting Network to fund Translator T.V., Inc.'s purchase of stations that it could as easily acquire directly since Trinity Broadcasting Network would only receive a percentage of the revenues from a Translator T.V., Inc. operation. He conceded that this might raise a conflict situation between Trinity Broadcasting Network and Translator T.V., Inc. Tr. 2686-89. Translator T.V., Inc. never in fact purchased an existing low power authorization.

e. Translator T.V., Inc. Name Change and Related Corporate Actions

80. On February 2, 1987, the directors decided to change the name of Translator T.V., Inc. to NMTV. MMB Exhibit No. 128. NMTV was not the first choice. The first choice had not contained the word "minority". Tr. 3779.

81. Shortly prior thereto, as noted, a written action authorizing the Odessa acquisition and also appointing Trinity Broadcasting Network as accounting agent of the corporation was adopted. MMB Exhibit No. 125. This was signed at the time only by Paul Crouch, Jane Duff and Terrence Hickey, who was erroneously listed as a director. As noted, David Espinoza did not learn about it until 1993. By similar written action, Jane Duff was elected assistant secretary on February 8, 1987. MMB Exhibit No. 131. David Espinoza was not aware of this action at the time of his testimony. Tr. 4265-66. Terrence Hickey was also erroneously identified in the papers implementing the name change as NMTV's secretary and by implication a director. MMB Exhibit No. 130. The mischaracterizations of Terrence Hickey's positions are attributed to errors by Norman Juggert. TBF Exhibit No. 108, para. 8.

f. Developments up to Special Meeting of NMTV of July 22, 1987

82. In March 1987, Jane Duff briefly pursued an offer to purchase a station in Oroville, CA that was dropped in fairly

short order. MMB Exhibit No. 134; Tr. 1720-21. In March 1987, Paul Crouch received a proposal from a media broker concerning the purchase of Channel 61, Wilmington, DE. He turned the matter over to Jane Duff, having discussed the price range that would be acceptable. He did not discuss it with David Espinoza. Tr. 2715-16. David Espinoza recalls having discussed it with Jane Duff; however, he cannot remember when. Tr. 4360. There are no records reflecting a board authorization to go forward with Wilmington at this time. NMTV did make an offer of 4.25 million dollars through Colby May by letter of March 23, 1987. MMB Exhibit No. 137. This offer was based on the expectation that Trinity Broadcasting Network would either loan the money or guarantee a loan. Tr. 1727-28.

83. NMTV filed a supplement to the Odessa application on April 14, 1987. MMB Exhibit No. 139. The supplement consisted of the articles of incorporation, bylaws and minutes of the first meeting of NMTV, in response to an informal request from the Commission's staff. Colby May asserts that he had "a number" of discussions with the staff, as part of which he mentioned that Jane Duff was a Trinity Broadcasting Network employee. TBF Exhibit No. 105, para. 26. There is no basis for making any findings as to what the Commission's staff may or may not have known at that time based on Colby May's assertions. There is clearly no basis for assuming that

the staff in fact knew everything it would have needed to know to make an informed decision as to NMTV's status, especially since NMTV failed to provide such information even when formally challenged, as will be seen below. The Odessa application was granted in June 1987. TBF Exhibit No. 105, para. 26.

g. Colby May Statements

84. NMTV work continued to be included in statements addressed to Trinity Broadcasting Network. MMB Exhibit No. 132, 135, 140.

85. Jane Duff attempted to justify the combining of NMTV with Trinity Broadcasting Network as reflected in MMB Exhibit No. 132 as a matter of economics, claiming they got a reduced retainer by combining all entities in one bill. Tr. 1719-20. Jane Duff explained MMB Exhibit No. 135 as reflecting that it was more economical to send one bill rather than two so Colby May could pass on the savings to NMTV. She says she discussed separate bills with Colby May in 1987 but she did not complain about joint bills or refuse to accept them. She handled the bills for all entities in any event. Tr. 1721-24. Jane Duff explained MMB Exhibit No. 140 on the ground that there was nothing wrong with it since she handled both accounts of Trinity Broadcasting Network. Colby May did not ignore any instructions to separate the bills -- she merely discussed it with him. Tr. 1729-31. In most subsequent inquiries

concerning combined bills, she merely referenced her prior explanation.

86. The first bill sent separately to NMTV was not until August 1992. MMB Exhibit No. 400; Tr. 2179-80.

h. Local Tax Exemption Application in Odessa

87. NMTV filed an application for exemption from Ector County, Texas taxes, dated April 30, 1989. MMB Exhibit No. 253. The application was signed by Eddie Roush, Jr. as General Counsel of NMTV. Id., p. 1, 3. In fact, Roush was not general counsel of NMTV, which had no legal department. He was a local attorney hired to handle the tax exemption matter. Tr. 1873. The application described NMTV as an "affiliate" of Trinity Christian Center of Santa Ana, Inc. and Trinity Broadcasting Network. MMB Exhibit No. 253, p. 4-5. The application included a list of similar "affiliates" consisting of Trinity Broadcasting Network owned stations and a Community Educational Television station. Id., p. 22; Tr. 1878. The application described the purposes of NMTV in a 17 page exhibit. This exhibit detailed at length NMTV's religious doctrine (including a list detailing the significance attributed to each book of the Bible) and its relationship to the electronic media. Id., p. 4-16. The exhibit contained no indication of a purpose of assisting minorities. Jane Duff justified this as reflecting that there was no minority preference in the context of tax exemptions so

they did not "focus" on NMTV's purported purpose of assisting minorities. Tr. 1875. After evading the Presiding Judge's attempts to get an answer, Jane Duff conceded that NMTV never had a minority director from a community in which it operated a station. Tr. 1877.

5. The Purported Disagreement as to the Fate of Odessa

a. The Purported Disagreement

88. A principal matter which is cited as evidence that the minority directors in fact controlled NMTV arose from a purported disagreement between Jane Duff and David Espinoza, on one side, and Paul Crouch, on the other, as to the future of the Odessa station. TBF Exhibit No. 101, p. 3-5. This had its origin at a special meeting of the NMTV board held on June 22, 1987. MMB Exhibit No. 147.

89. Initially, revisions were made in the corporate officers. Jane Duff was elected secretary, treasurer and assistant vice president. David Espinoza was elected vice president, reflecting, it is asserted, that he "would be able to provide assistance to the President as a result of his leadership experience and talents."

90. According to the minutes, Paul Crouch proposed that the corporation "explore the feasibility" of selling the Odessa permit, that assignment of which had just been approved, in order to acquire a station in another area. According to the minutes, David Espinoza and Jane Duff

expressed "strong opposition", based on Jane Duff's belief that the Odessa station presented "a valuable opportunity to establish minority controlled television as a success", with which sentiment David Espinoza reportedly agreed, stressing its demographics and his ministerial experience in Texas. He had preached at churches in the Amarillo, Lubbock and El Paso area many years ago. TBF Exhibit No. 106, para. 12.

91. Also according to the minutes, David Espinoza urged that "plans begin immediately for local programming." Paul Crouch, however, urged emphasis on network programming for a considerable time until the station became financially sound. Jane Duff said that plans for local programming should be formulated even if there is a reasonable delay in implementation. She agreed to direct the development of such plans.

92. Paul Crouch attributed his change of heart concerning Odessa to his perception that Odessa would not be viable because of heavy cable penetration in the area and since it was smaller than he had thought. Tr. 2723. He testified that he yielded to Jane Duff and David Espinoza because he saw they had their hearts set on building the station. Tr. 2724. His concern as to the viability of the station also resulted in his desire to minimize programming costs. Tr. 2725.

93. Odessa went on the air in October 1988. TBF Exhibit No. 101, para. 50. At a December 12, 1988 meeting, Jane Duff reported that Odessa was being well received and was being supported by loyal viewers. The minutes state that Paul Crouch again raised the possibility of selling Odessa to replace it with a station in a larger market. David Espinoza and Jane Duff opposed it and the proposal was tabled. According to the minutes:

"David Espinosa [sic] suggested that the expectations of the minority community served by the station should be considered. These individuals have demonstrated their support for the station and should be given great weight. Mrs. Duff stressed the fact that the station was being adequately supported and that needs were being met."

MMB Exhibit No. 230. Following this discussion, however, the minutes reflect a discussion of other possibilities for expansion both for low power and full power stations. Since, as the minutes also reflect, NMTV had just acquired Portland, there is an apparent inconsistency with the purported rejection of the sale of Odessa, since no further full power expansion would have been possible except by selling either Odessa or Portland (which would have been an unlikely option since Portland is a much larger market than Odessa).

b. The Reality of the Situation

94. Only five months later, in May 1989, NMTV adopted an action by written consent authorizing the sale of Odessa for at least one million dollars. MMB Exhibit No. 256. Thus, what had purportedly been a significant bone of contention only five months before was summarily disposed of without any discussion whatsoever.

95. According to Jane Duff, she reversed her prior position based on the fact that the station had not been able to get cable carriage and donations had not met expectations. She also cited the availability of other opportunities as well as a prospective buyer who would keep it as a Trinity Broadcasting Network affiliate, which it currently is. Tr. 1879-85. This contradicted an affidavit dated September 23, 1991 submitted by Jane Duff in response to a Commission inquiry in the Wilmington proceeding, wherein she attributed the decision to sell Odessa to a desire to acquire a station in a larger market. TBF Exhibit No. 121, p. 11.⁴

96. David Espinoza characterized his view at the December 12, 1988 meeting as having been that Odessa minorities needed the station and they had to give it time to grow. TBF Exhibit No. 105, para. 17. According to David Espinoza he reversed his prior commitment in order to acquire

⁴ Jane Duff later attributed the failure to produce local programming to the lack of local cable carriage. TBF Exhibit No. 121, p. 15.

a station in a larger market. TBF Exhibit No. 105, para. 18. He also said that he no longer believed in Odessa because Jane Duff had told him it was not being adequately supported. He made no effort to examine records to verify this claim. Tr. 4227-29; 4243. He could not explain why Odessa was deemed adequately supported in December 1988 but was deemed to be so financially deficient five months later in May as to justify the sale. He conceded that this could only be explained as reflecting a desire of moving to a larger market. Tr. 4244-45. Ultimately, he said Odessa was sold to serve more people irrespective of minorities. Tr. 4249. He conceded that Odessa was not given an adequate opportunity to develop. Tr. 4245.

97. The minutes of the January 15, 1990 NMTV annual meeting indicate that a report was received regarding Odessa. It is not reflected that the report contained any indication of financial deficiencies. The minutes then reflect a discussion of the possible sale of Odessa premised solely on obtaining a facility that would reach a larger audience. MMB Exhibit No. 293. There is in fact no evidence of record beyond undocumented assertions that the Odessa station's financial performance was substandard.

98. David Espinoza's written testimony -- TBF Exhibit No. 105, para. 19 -- attributed his change of heart to a discussion with Jane Duff in May 1989 concerning the possible

acquisition of a station in Concord, CA. The record, however, reflects that this did not come before the NMTV board until June 1990, when the board authorized the pursuit of Concord. MMB Exhibit No. 315. In the interim, the board in April had also authorized efforts to acquire a station in Hammond, IN. MMB Exhibit No. 300. It thus appears that the counsel who wrote David Espinoza's written testimony fed him an anachronism.

99. No local programming was ever originated at Odessa. Tr. 1481. No budget was ever prepared for local programming in Odessa. Tr. 1483. There was never a board meeting at which the purported difficulties in initiating local programming were discussed and where a vote was taken as to whether NMTV should allocate funds for that purpose. Tr. 1484-85.

100. David Espinoza's statement at the June 22, 1987 meeting concerning local programming was merely a suggestion. He did not propose any deadline nor did he take any further action to bring about local programming since he viewed Jane Duff as being in charge of such matters. Tr. 4231-37. He had no recollection of whether he actually mentioned local programming at the December 1988 meeting. Tr. 4240-41. He played no role in the construction of Odessa and never visited it. Tr. 4357-58. He didn't know how far any planning for local programming went. Tr. 4235. He never requested a

meeting of the board to discuss the lack of local programming nor did he ever write a letter to Jane Duff or Paul Crouch expressing his dissatisfaction with the lack of local programming. He never considered resigning from the board over the issue. Whatever his dissatisfaction, he simply accepted Jane Duff's explanation that local programming wouldn't occur. Tr. 4237. He didn't consider it feasible to bring up the possibility of removing Paul Crouch so that NMTV could acquire whatever stations it wanted, although he thought that at some point this would be essential. At the time, however, he felt that Paul Crouch's leadership and knowledge were essential since he was like the father to a child. Tr. 4383-84.

101. Odessa was finally sold, after unsuccessful negotiations with other parties to Prime Time Christian Television. MMB Exhibit No. 327. Only prospective buyers who would maintain a Trinity Broadcasting Network affiliation had been considered. Tr. 2221-32. The sale was closed on April 5, 1991. MMB Exhibit No. 358.

102. NMTV later voted on April 20, 1993 to forgive the \$650,000 debt owed by Prime Time Christian Television as a result of the sale because it couldn't pay the debt. MMB Exhibit No. 412. Jane Duff didn't want to foreclose because it would look bad and because it was desired to keep Trinity Broadcasting Network programming on the station. Tr. 2229-32.

Reacquiring the station was not considered. Tr. 2232. The only apparent beneficiary of this was Trinity Broadcasting Network which still had an Odessa affiliate. Paul Crouch conceded that there was no benefit to NMTV in forgiving the debt. Tr. 3047. He also did not view the fact that NMTV itself was in debt to be pertinent since forgiving debt resulted in spiritual blessing. Tr. 3047-48. Nor was consideration given to foreclosing on the non-minority Prime Time Christian Television and giving or selling the station to a minority-controlled entity since in Paul Crouch's view it was contrary to scripture to bring legal actions against fellow believers. Tr. 3048-49. Most significantly, however, Paul Crouch testified, when asked why there was no attempt to obtain and sell the physical assets, that doing so would shut down the station, and "we" didn't want to do that. Tr. 3049. This can only be viewed as an admission of the paramount interest of Trinity Broadcasting Network in keeping its programming available, which was inconsistent with efforts to obtain redress for NMTV as a result of the non-payment of monies owed.

102. In light of the foregoing, it is impossible to find that any initial disinclination on the part of Jane Duff and David Espinoza to go along with Paul Crouch's desire to abandon Odessa is indicative that they were in a position to control NMTV. The fact remains that his goal was in fact

implemented in relatively short order. Moreover, the credibility of NMTV's claim is undermined by the suggestion that the about face was the product of unforeseen financial problems at Odessa, rather than a desire to "trade-up" to a larger market. There is no extrinsic evidence of unexpected financial reverses at Odessa, whereas there is ample evidence that the primary reason for its disposition was to enable NMTV to pursue another station in a larger market. Further, the record amply demonstrates that any commitment on the part of David Espinoza to minority programming in Odessa amounted to nothing more than a vague wish that he did virtually nothing to bring to fruition. He rather passively accepted the decisions of others not to institute local programming in Odessa and then to dispose of the station, which undermines the credibility of his directorship. Finally, the fact that NMTV ultimately excused the debt of the Odessa purchaser notwithstanding its own mountain of debt in order to ensure the continued availability of Trinity Broadcasting Network programming confirms that, from first to last, the controlling consideration has been the interest of Trinity Broadcasting Network.

6. The Purported Disagreement as to the Fate of Houston

a. The Purported Disagreement

104. A further incident cited as evidence of the independence of the minority directors relates to a decision in early 1989 not to build a low power station at Stafford, Texas, which is in the Houston market. According to Jane Duff she opposed building the station, in which decision she was supported by David Espinoza, whereas Paul Crouch wanted to build the station and sell it later. The station was not built but was sold. TBF Exhibit No. 101, p. 2-3. According to her written testimony, Jane Duff's position was premised on the fact that NMTV had just finished building Odessa and was in the process of planning the construction of Portland, so she felt the corporation should focus on those projects rather than Houston. Id. In her cross-examination, she put it more in terms of an overload of responsibilities that was affecting her personally at the time. Tr. 1818-19. Paul Crouch had wanted to build the station because, although there was a noncommercial station in Houston that carried Trinity Broadcasting Network programming, that station could not because of its noncommercial status carry the Trinity Broadcasting Network telethons. Tr. 1821-22.